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Google: An Intersection of Business and Technology

FOREWORD

WHAT WAS ONCE AN IDEA IN A COLLEGE DISSERTATION is now one of the most powerful companies in the world. Google did not become powerful in the traditional way. Rather, it first was run out of a garage,¹ later went public with a unique offering system,² and now thrives under the corporate motto of "Don't be evil."³ Today, Google employs over 10,500 people⁴ and its stock—which was initially offered at \$82 a share—just broke the \$700 mark.⁵ Not only is Google a business force, but its business is centered on a technology that has transformed our society: the search engine.⁶ At its core, Google is a symbol of the intersection of business and technology, and presents a unique vehicle through which we can examine a number of issues that arise at that intersection.⁷ Although much has been written about Google,⁸ this Issue of the *JBTL* is unique because it aims to examine a few of the most engaging legal issues that surround Google.

Despite its size, Google is regarded widely as one of the best places to work in the world.⁹ The vast number of applications for employment that Google receives every year demonstrates this.¹⁰ Google's popularity among employees results in part from the premier benefits package that it offers.¹¹ Many commentators have suggested that other large employers should offer benefits packages similar to Google's bene-

1. Todd Raphael, *At Google the Proof Is in the People*, WORKFORCE MGMT., Mar. 2003, at 50.

2. See Eugene Choo, Note, *Going Dutch: The Google IPO*, 20 BERKELEY TECH. L.J. 405 (2005).

3. Google Investor Relations, Google Code of Conduct, <http://investor.google.com/conduct.html> (last visited Sept. 27, 2007).

4. Google Inc., Annual Report (Form 10-K), at 15 (Feb. 23, 2007).

5. Kevin J. Delaney, *Google's Clout Grows with Price*, WALL ST. J., Nov. 1, 2007, at A3.

6. Michael Liedtke, *Google Boggles the Mind*, COURIER MAIL (Australia), Nov. 2, 2007, at 45.

7. While Google is the vehicle through which our authors discuss many issues at the intersection of business and technology, it is worth noting that many of these issues are present outside of the Google context. Indeed, Google is merely the vehicle through which we are discussing issues that arise at the intersection of business and technology.

8. *Inside Googleplex*, ECONOMIST, Sept. 1, 2007, at 56; *Who's Afraid of Google?*, ECONOMIST, Sept. 1, 2007, at 9; Epic 2014 (Robin Sloan & Matt Thompson 2004) (depicting a future Google that is capable of bringing print media to an end), available at <http://robinsloan.com/epic>.

9. See Robert Levering & Milton Moskowitz, *In Good Company*, FORTUNE, Jan. 22, 2007, at 94.

10. Google expects to receive over one million applications for employment this year. Kevin J. Delaney, *Start-Ups Make Inroads with Google's Work Force*, WALL ST. J., June 28, 2007, at B1. Of those that receive a job at Google, very few will leave. See Adam Lashinsky, *Search and Enjoy*, FORTUNE, Jan. 22, 2007, at 70, 80 (reporting that Google had an attrition rate of 5 percent).

11. Leah Carlson Shepherd, *Fortune Hails "100 Best Companies to Work For,"* EMP. BENEFIT NEWS, Apr. 1, 2007, at 1.

fits package.¹² However, it still is not clear whether Google's benefits package does more harm than good to the lives of employees.¹³

Google's power cannot be measured by its stock price or number of employees alone. Indeed, many argue that Google's true power lays in its possession of individual users' private information.¹⁴ Google and its products have altered the way in which we as a society share our private information. Despite the desire to keep information private, individual users expose their private information to Google on a daily basis.¹⁵ Furthermore, individuals are unlikely to stop using Google because it offers an unparalleled service. Indeed, many individual users view their privacy as a sacrifice that they must make to enjoy Google's service.¹⁶ Thus, Google likely will gather vast amounts of users' private information for years to come.

Google's power also lies in how it organizes the World Wide Web. Indeed, millions of individuals rely on Google to organize all of the internet's information, as well as their own information.¹⁷ Often, Google may organize and provide information to users that individuals or entities find objectionable.¹⁸ The type of negative publicity that can result from an objectionable search result may cause irreparable damage to a company's or individual's reputation.¹⁹ Frank Pasquale has suggested that Google's power should be limited on this front by providing individuals with the right to an "asterisk" linking to a reply on the first page of the objectionable search results.²⁰ It remains to be seen whether this suggestion will become a reality and limit some of Google's power.

Google is not only powerful, but it is also unique. For example, Google was one of the first American companies to use a Dutch Auction format for its initial public

12. *Perk Place: The Benefits Offered by Google and Others May Be Grand, but They're All Business*, KNOWLEDGE@WHARTON, Mar. 21, 2007, <http://knowledge.wharton.upenn.edu/article.cfm?articleid=1690> (noting that other companies are beginning to offer benefits similar to Google's).

13. See Susan J. Stabile, *Google Benefits or Google's Benefit?*, 3 J. BUS. & TECH. L. 97, 101-02 (2008).

14. Kodj Gbegnon, Note, *Digitized Scholarship and the Library Concept: Allowing the History of the Library Exemption to Inform How We View Google's Digitized Library*, 29 HASTINGS COMM. & ENT. L.J. 75, 85-89 (2006).

15. Chris Ayres, *Google: Could This Be the New God in the Machine?*, TIMES (London), Nov. 1, 2003, at 4; Thomas L. Friedman, *Is Google God?*, N.Y. TIMES, June 29, 2003, § 4, at 13; Michael Gorman, Commentary, *Google and God's Mind*, L.A. TIMES, Dec. 17, 2004, at 15; Alex Williams, *Planet Google Wants You*, N.Y. TIMES, Oct. 15, 2006, § 9, at 1.

16. Williams, *supra* note 15 (quoting a law student as stating, "I don't know if I want all my personal information saved on this massive server in Mountain View [Google's headquarters], but it is so much of an improvement on how life was before, I can't help it").

17. Google has indexed approximately 70 percent of the total World Wide Web. Posting of Danny Sullivan to SearchEngineWatch.com, <http://blog.searchenginewatch.com/blog/050517-075657> (May 17, 2005, 7:56 EST). Google supposedly has an index more than three times larger than that of any other search engine. Google Help Center, *Sizing Up Search Engines*, <http://www.google.com/help/indexsize.html> (last visited Sept. 13, 2007); see also Google, Corporate Information, Company Overview, <http://www.google.com/corporate/index.html> (last visited Sept. 13, 2007) (stating that one of Google's goals is to "organize the world's information and make it universally accessible and useful").

18. See Frank Pasquale, *Rankings, Reductionism, and Responsibility*, 54 CLEV. ST. L. REV. 115, 119-20 (2006).

19. *Id.* at 119-20.

20. *Id.* at 117, 136-37.

offering.²¹ In addition, Google is unique because it donates a large portion of its profits to its charitable organization.²² Despite Google's success, it remains to be seen whether other companies will adopt either of these unique features.²³

As with any other business, Google's power is susceptible to the governing law. For example, Google's search engine and library project derive their lawfulness from the fair use doctrine.²⁴ As Google expands, it may encounter a hostile legal environment in European nations with less developed free speech traditions.²⁵ Furthermore, even though the United States has provided a kind legal forum for Google so far, much of the law that affects Google is unsettled.²⁶ Indeed, courts are constantly shaping the law that affects Google's business practices, products, and services. Because the law affects Google's everyday activities, and because Google has become an integral component of business and social life in America, the law has the potential to affect much of society's activities—making the legal issues addressed by our authors in this Issue even more important.

Google is a prime example of an intersection between business and technology. As a result, Google presents a myriad of timely and fascinating legal issues that are worth examining. In this Issue of the *JBTL*, our authors delve into some of these issues, offering insight into why these issues developed, how these issues might be resolved, and what questions these issues raise for the future.

21. See Lucas C. Townsend, Comment, *Can Wall Street's "Global Resolution" Prevent Spinning? A Critical Evaluation of Current Alternatives*, 34 SETON HALL L. REV. 1121, 1169 (2004) (reporting that since 1999, W.R. Hambrecht + Co., the leading Dutch Auction company, has completed only nine public offerings). See generally Christine Hurt, *What Google Can't Tell Us About Internet Auctions (And What It Can)*, 37 U. TOL. L. REV. 403, 423–24 (2006).

22. See Katie Hafner, *Philanthropy Google's Way: Not the Usual*, N.Y. TIMES, Sept. 14, 2006, at A1.

23. See Matthias Hild, *The Google IPO*, 3 J. BUS. & TECH. L. 41, 51 (2008); Shruti Rana, *From Making Money without Doing Evil to Doing Good without Handouts: A Closer Look at the Google.org Experiment in Philanthropy*, 3 J. BUS. & TECH. L. 87, 95 (2008).

24. See Jonathan Band, *Google and Fair Use*, 3 J. BUS. & TECH. L. 1, 10, 26 (2008).

25. *Id.* at 26–28.

26. See generally Jeffrey Fabian, *Rescuecom Corp. v. Google, Inc.: A Misuse of the Federal Trademark Doctrine of Commercial Use*, 3 J. BUS. & TECH. L. 147 (2008).